



PATENT
104610-50029 (20532)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of: :
Kohchi et al. : Art Unit : 1653
Serial No. : 09/760,949 : Examiner : C. Kam
Filed : January 16, 2001 :
Title : AEROTHRICIN DERIVATIVES :

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

**Terminal Disclaimer To Obviate A Double Patenting
Rejection Over A Prior Patent**

Basilea Pharmaceutica AG, a corporation of Switzerland, having a principal place of business at 11 Neuhofweg, CH-4102, Binningen, Switzerland, the owner of 100% interest in the instant application as assignee of the entire right, title and interest in and to the said application and in and to any and all Letters Patent of the United States which may issue from said application, by virtue of an Assignment by Hoffmann-La Roche Inc. to Basilea Pharmaceutica AG, recorded in the United States Patent and Trademark Office on May 10, 2001 at reel 011783, frame 0988, hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior U.S. Patent No. 6,489,440, filed December 3, 2002. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

11/03/2003 AMAB11 00000102 09760949

01 FC:1814

110.00 OP

#717956 v1
104610-50029

Adjustment 11/03/2003 AMAB11 00000102 09760949 110.00 OP
01 FC:1814

Adjustment 11/03/2003 AMAB11 00000102 09760949 110.00 OP
01 FC:1814

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record.

William H. Epstein Oct 23, 2003
Signature Date
By: William H. Epstein
Registration No. : 20,008

- ☒ Terminal Disclaimer Fee under 37 CFR 1.20(d) included.

RECEIVED
NOV 06 2003
TECH CENTER 1600/2900